

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

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████████████████████

Reg. No.: 15-003459
Issue No.: 3008; 5001
Case No.: ██████████
Hearing Date: April 9, 2015
County: WAYNE-DISTRICT 15
(GREYDALE)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a three-way telephone hearing was held on April 9, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Health and Human Services (Department or DHS) included ██████████, Family Independence Specialist.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective December 1, 2014, ongoing?

Did the Department properly process Claimant's State Emergency Relief (SER) application for non-heat electricity (electricity) and heat dated January 15, 2015?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant is an ongoing recipient of FAP benefits. See Exhibit 1, pp. 4-5.
2. For December 2014, Claimant received \$ ██████████ in FAP benefits for a group size of four. See Exhibit 1, p. 5.
3. Effective January 1, 2015, ongoing, Claimant received ██████████ in FAP benefits for a group size of five. See Exhibit 1, pp. 4-5.

4. On January 15, 2015, Claimant applied online for SER assistance for electricity and heat.
5. On February 19, 2015, the Department erred in processing Claimant's SER application as it sent her two separate determination notices with different outcomes. See Exhibit 1, pp. 3 and 6-8.
6. On February 19, 2015, the Department sent Claimant an Application Notice notifying her that she is not eligible for SER assistance because her emergency has already been resolved. See Exhibit 1, p. 3.
7. On February 19, 2015, the Department sent Claimant a SER Decision, which required that Claimant pay a [REDACTED] copayment for the electricity service and then once Claimant pays her copayment, the Department would pay [REDACTED] towards the electricity. Exhibit 1, p. 6. Also, the SER Decision notified that if Claimant pays a \$ [REDACTED] copayment for the heat service, then the Department would pay [REDACTED] towards the heat. Exhibit 1, p. 6.
8. On February 24, 2015, Claimant filed a hearing request, protesting the SER denial and her FAP allotment. See Exhibit 1, p. 2.
9. On April 2, 2015, Claimant requested a three-way telephone hearing, which was subsequently granted.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

FAP benefits

As a preliminary matter, Claimant disputed her FAP allotment from December 1, 2014, ongoing. This Administrative Law Judge (ALJ) allowed Claimant to dispute her FAP benefits from December 1, 2014, ongoing, per BAM 600. See BAM 600 (January 2015), pp. 4-5 (The Michigan Administrative Hearing System (MAHS) may grant a hearing for a dispute regarding the current level of benefits or denial of expedited service (FAP only)).

First, Claimant testified that she submitted an online change report late November 2014 or early December 2014 notifying the Department that her household size increased from four to five. As such, Claimant argued that her FAP benefits should have increased from December 1, 2014, ongoing. It should be noted that the evidence presented that Claimant's FAP benefits reflected a group size of five effective January 1, 2015, ongoing. See Exhibit 1, pp. 4-5.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2014), p. 10. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 10. These include, but are not limited to, changes in persons in the home. BAM 105, p. 10. For FAP only, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2014), p. 6. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 6. A member add that increases benefits is effective the month after it is reported. BEM 550 (February 2014), p. 4.

Based on the above information, it appears that Claimant's FAP group size should have increased to five effective December 2014, *only if* Claimant reported the change in November 2014. See BEM 550, p. 4. However, Claimant's testimony was unclear if she reported the increase in November or December 2014, which would obviously effect the month of increase. See BEM 550, p. 4. But, the Department also was unable to rebut Claimant's testimony that she submitted a change report informing of the member add.

Second, Claimant testified that her Family Independence Program (FIP) benefits closed effective February 1, 2015 to April 30, 2015, due to a three-month disqualification. Claimant testified that her benefits should have also increased because she is no longer receiving cash assistance for this period.

In response, the Department was unable to rebut Claimant's testimony. The Department failed to present any FAP budgets to determine if the Department properly calculated Claimant's FAP allotment effective December 1, 2014, ongoing.

FIP benefits are considered the unearned income of the FIP head of household (HOH, formerly grantee). BEM 503 (July 2014), p. 14. The Department counts as unearned income, the amount of cash assistance benefits minus any excludable portion. BEM 503, p. 14. Some types of FIP penalties, require budgeting of cash assistance for FAP, even when not received. BEM 503, p. 15.

Again, the evidence is unclear as to whether the Department was budgeting Claimant's cash assistance effective February 1, 2015. See BEM 503, pp. 14-15.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (January 2015 and April 2015), p. 35. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 38.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP allotment effective December 1, 2014, ongoing. See BAM 600, pp. 35-38. The Department failed to provide any FAP budgets to determine if whether the Department properly calculated Claimant's FAP allotment effective December 1, 2014, ongoing. As such, the Department will recalculate Claimant's FAP allotment effective December 1, 2014, ongoing, in accordance with Department policy.

SER application

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (February 2015), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, p. 1. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. ERM 301, p. 1. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days. ERM 301, p. 1.

In this case, on January 15, 2015, Claimant applied online for SER assistance for electricity and heat. However, on February 19, 2015, the Department erred in processing Claimant's SER application as it sent her two separate SER determination notices in which the outcomes were different. See Exhibit 1, pp. 3 and 6-8.

As to the first SER determination, Claimant was found not eligible because the Department testified that Claimant was enrolled in a payment plan. See Exhibit 1, pp. 1 and 3. However, the Department failed to provide any evidence that Claimant was enrolled in a payment plan. Also, Claimant testified that she was not enrolled in a payment plan since December 10, 2014.

As to the second determination, the Department found Claimant eligible for SER assistance, but with a copayment. See Exhibit 1, pp. 6-8. The Department testified that the second determination notice had a different case number under the Claimant. See Exhibit 1, p. 6. Thus, one possible reason why two determination notices were sent to Respondent was due to the different case numbers.

An application may be submitted electronically through the MIBridges. ERM 103 (October 2013), p. 1. Applications must be registered within one day of receipt. ERM 103, p. 1. Online applications will be sent electronically to a registration inbox for proper assignment. ERM 103, p. 1. The application date is the first day of the 30-day SER eligibility period. ERM 103, p. 2.

The Department completes an SER budget in its system for each request/application. ERM 103, p. 2. The Department calculates payment maximums, required payments, income and asset copayment, client contributions, etc. based on the information entered from the SER application and determines eligibility or ineligibility for SER. ERM 103, p. 2. The SER standard of promptness is 10 calendar days, beginning with the date the signed SER application is received in the local office. ERM 103, p. 6. The Department informs all SER applicants in writing of the decision made on their application. ERM 103, p. 3. The Department mails or gives the DHS-1419, Decision Notice, to the applicant. ERM 103, p. 3.

Based on the foregoing information and evidence, the Department did not act in accordance with Department policy when it improperly processed Claimant's SER application for heat and electricity dated January 15, 2015. The Department acknowledged its error when it processed the application because it resulted in two different outcomes. It is not proper for the Department to issue two SER decisions, in which one informs her of a denial and another decision informs of her an approval (with a copayment). At some point, the Department did not process the application properly because there were two decision notices generated. As such, the Department will re-register and reprocess Claimant's SER application for heat and electricity dated January 15, 2015 and the Department will inform her of the decision in accordance with Department policy. See ERM 103, pp. 1-7.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department (i) failed to satisfy its burden of showing that it acted in accordance with Department policy when

it calculated Claimant's FAP allotment effective December 1, 2014, ongoing; and (ii) did not act in accordance with Department policy when it improperly processed Claimant's SER application for heat and electricity dated January 15, 2015.

Accordingly, the Department's FAP and SER decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate the FAP budget for December 1, 2014, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from December 1, 2014, ongoing;
3. Initiate re-registration and reprocessing of Claimant's SER application with heat and electricity dated January 15, 2015, in accordance with Department policy and as the circumstances existed at the time of application;
4. Issue supplements to Claimant for any SER benefits she was eligible to receive but did not from date of application; and
5. Notify Claimant of its FAP and SER decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and
Human Services

Date Signed: **4/13/2015**

Date Mailed: **4/13/2015**

EJF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

[REDACTED]